

201409017



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC 03 2013

Uniform Issue List: 408.03-00

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T:EP:RA:T3

Control No. \*\*\*\*\*

Legend:

Taxpayer A        -        \*\*\*\*\*  
  
Employer B        -        \*\*\*\*\*  
  
Partnership C     -        \*\*\*\*\*  
   \*\*\*\*\*  
   \*\*\*\*\*  
  
Administrator D   -        \*\*\*\*\*  
  
Date E             -        \*\*\*\*\*  
  
IRA X              -        \*\*\*\*\*  
  
Amount Y          -        \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated January 25, 2013, as supplemented by letter dated March 29, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A withdrew Amount Y from IRA X on Date E. Taxpayer A asserts that his failure to complete a rollover of Amount Y was due to errors

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committed by Employer B, Partnership C, and Administrator D. Taxpayer A intended to rollover the amount withdrawn from IRA X into a new rollover IRA that would invest in Partnership C, and he believed that the investment in Partnership C had been made through a new IRA in his name.

Taxpayer A is employed by Employer B. In late 2010, Taxpayer A was informed by Employer B that he could invest retirement assets with a limited partnership fund (Partnership C) for which Employer B was the investment manager. The general partner of Partnership C is an entity related to Employer B.

When Taxpayer A asked Employer B how to go about making an IRA investment in Partnership C, he was given a new subscription agreement and was told to fill it out in a manner indicating the IRA nature of the new investment, and to submit it to the administrator of Partnership C, Administrator D. Taxpayer A was further told to wire the IRA funds to Administrator D upon submitting the completed subscription agreement, and that Administrator D would then take the necessary steps to set up the new IRA investment.

Taxpayer A had previously established IRA X with another financial institution. Taxpayer A decided to invest Amount Y in Partnership C as an IRA investment. Before wiring funds to Partnership C, Taxpayer A completed, signed, and delivered to Administrator D a subscription agreement to invest Amount Y in Partnership C as an IRA investment. At relevant places in the subscription agreement, Taxpayer A clearly indicated that the investment of Amount Y was an IRA investment.

On Date E, Taxpayer A withdrew Amount Y from IRA X, and wired those funds to an account owned by Partnership C. It was Taxpayer A's understanding that Administrator D would establish a rollover IRA account to hold Amount Y, and that this account would then be invested in Partnership C.

Several e-mails sent between Taxpayer A, Employer B, and Administrator D within the initial 60-day rollover period also show that Taxpayer A intended the investment of Amount Y to be an IRA investment, and that Employer B and Administrator D both understood that the investment was intended to be an IRA investment. Administrator D specifically confirmed, by e-mail dated less than one-month following the withdrawal from IRA X, that the investment in Partnership C was registered as an IRA investment. Taxpayer A accordingly believed that Administrator D had timely established a rollover A IRA account on his behalf, and that such account was the investor in Partnership C with respect to Amount Y.

However, no new IRA was in fact established. Rather, Amount Y was invested directly in Partnership C. While the subscription form provided for investments by IRAs and contained places for signature by the IRA custodian,

Administrator D processed the subscription form as an investment by an IRA without such signature. In addition, Administrator D used Taxpayer A's social security number as the taxpayer identification number for the IRA, despite the fact that an individual cannot be an IRA custodian.

In early 2012, Taxpayer A received a K-1 for 2011 that reflected the interest as owned by himself as an individual, rather than by an IRA, despite Administrator D's prior confirmation that the investment had been registered in the name of an IRA. Shortly thereafter, in response to an inquiry from the Internal Revenue Service "(IRS)" regarding the distribution from IRA X, Administrator D provided Taxpayer's accountant documentation showing that the subscription agreement had been marked as an IRA investment. The IRS subsequently closed the matter.

Following these events, Taxpayer A learned that the amount transferred to Partnership C from IRA X had not been deposited in a rollover IRA.

Taxpayer A had not rolled over any other amounts from an IRA owned by Taxpayer A within the one-year period ending on Date E.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount Y from IRA X on Date E.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount

which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to complete a rollover of Amount Y was due to errors committed by Employer B, Partnership C, and Administrator D. Taxpayer A intended to rollover the amount withdrawn from IRA X into a new rollover IRA that would invest in Partnership C, and he believed that the investment in Partnership C had been made through a new IRA in his name. The documentation also demonstrates that Administrator D's processing of the investment in Partnership C as an investment by an IRA despite the lack of signatures by an IRA custodian, and Administrator D's listing the investor as an IRA using a taxpayer identification number that could not legally be that of an IRA

custodian led Taxpayer A to erroneously believe that no further steps were needed to ensure that the investment was held through an IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount Y from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount Y into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

As agreed in your representative's letter dated November 22, 2013, the Service will not rule on the remaining ruling requests listed in your January 25, 2013 letter.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*\*\*\* ) at (\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

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CC: \*\*\*\*\*  
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